July 4. 1775.

[LORD KENNET Reporter.]

INFORMATION

FOR

JOHN WEDDERBURN, Esq; of Ballandean, Defender;

AGAINST

JOSEPH KNIGHT, a Negro, Pursuer.

THE defender, sometime ago, purchased the pursuer, when a boy, from Captain Knight, Commander of a Guinea ship: He had been brought by the Captain from that country, with a cargo of other slaves. The FACT.

As the pursuer was at that time too young to support the labour of the field, the defender employed him in the house, bred him up as his own personal servant; and when he returned to this country, about four years ago, brought him along with him in that character.

The pursuer proved a tolerable servant, and, it is acknowledged, the defender behaved to him with great indulgence: He caused him to be taught to read and write, and had him baptized, after having previously ordered that he should be instructed in the principles of the Christian-religion.

The pursuer deviated a little from the strict rules of this new part of his education, in an intrigue he had soon after with one of the maids of the house. The defender gave him money to support the girl in child-bed, and to defray the expences of the sickness and funeral of the child; after this the pursuer having (as he said) married his mistress, insisted that she should be received again into the house as

as a ſervant. It was impoſſible to comply with this requeſt; and the refuſal, it ſeems (ſupported by a piece of information the purſuer had received from Mr Donaldſon's News-paper with regard to the negro-cauſe before Lord Mansfield) induced him to lay a ſcheme for deſerting the defender's ſervice. He became diſcontented and ſullen, and packed up his cloaths, and other articles the defender had given him, with a view of making an elopement.

Upon being informed of this, the defender preſented a petition to the Juſtices of Peace of the county, ſetting furth the facts above mentioned, and praying for a warrant to apprehend the purſuer, that he might be examined; and upon the facts being proved, to find the defender intitled to retain him as a ſervant.

The purſuer accordingly appeared before the Juſtices at an after meeting, where he voluntarily emitted, and ſigned the following declaration: "That he was brought from the coaſt of Guinea by one "Captain Knight, when he was very young, and carried to Jamaica, "where, ſometime after, upon the cargo being ſold, he was ſent up "from the ſhip to the petitioner's (*i.e.* defender's) houſe in Jamaica: "That he knows it is the practice of ſhipmaſters to ſell the ſlaves they "bring from Guinea: That he does not know any thing of his being ſold "to Sir John, but that he remained with him from the time mentioned "as a ſlave; and he brought him with him from Jamaica to Britain "about four years ago. Declares, That he has ſerved him ever ſince as "a ſervant, and that Sir John furniſhed him with cloaths and other "neceſſaries; and that he has received money from him at different "times: That he has no writing from Sir John, freeing him of his "ſlavery, but that Sir John, about the time he was baptized, ſaid he "would give him his freedom ſeven years hence if he behaved well, "for that now he was only beginning to be of uſe to him; and that "it is not a twelvemonth ſince this converſation happened: And "that Sir John, at that time, ſaid he would not give him his freedom "here, becauſe he would ſtarve, as no body would employ him; "but that he would give him his freedom in Jamaica, and a houſe "and ſome ground, where he might live comfortably all the days of "his lifetime: That he intended to go away and leave his ſervice "ſome days ago, but that his cloaths were not packed up: That "what made him reſolve to go away was a paragraph he read in "Mr Donaldſon's News-paper, publiſhed the 3d July 1772, and "from that time he has had it in his head to leave his ſervice: That "he has been entertained and cloathed as well as the reſt of Sir "John's ſervants; but that his ſtockings were generally coarſe, ex-"cept four pair; and that he got no regular pocket-money, nor no-"thing for wages; and that he is married: That he was married at "Edinburgh

Declaration of Jos Knight before the Juſtices of Peace.

" Edinburgh to one Anne Thomſon, who reſides in Dundee; and " that he was married at Edinburgh by one Mr Johnſtone upon the " 9th March laſt; and that the ſaid Anne Thomſon was out of Sir " John's ſervice before that time."

Upon conſidering the petition and declaration, the Juſtices " Found " the petitioner intitled to the ſaid Joſeph Knight's ſervice as a ſer- " vant, and that he muſt continue as formerly; and decerned, and " appointed the clerk to furniſh the ſaid Joſeph Knight with a full " copy or extract thereof." *The ſentence of the Juſtices.*

The purſuer was much diſſatisfied with this judgment: Told the Juſtices, that he would apply to the Sheriff, who was a better Judge than they; and had given a contrary deciſion in a late queſtion.

Having ſaved his pocket-money for that purpoſe, he was accordingly as good as his word; and preſented a petition to the Sheriff, ſetting furth the above mentioned facts: " And that his maſter inſiſted " upon his continuing a perpetual ſervant, or, in other words, a " ſlave; and praying that it might pleaſe the Sheriff to find, that the " petitioner cannot be continued in a ſtate of ſlavery, or compelled to " perpetual ſervice; and decern and ordain him the ſaid Sir John " Wedderburn to pay to the petitioner the ſum of for his " bygone wages, and the ſum of as his current half-year's " wages till Whitſunday next; and to find the petitioner may en- " gage himſelf with another maſter, unleſs Sir John and he ſhall " agree for a further continuation of his ſervice at ſuch wages as he " ſhall contract for; and to inhibit and diſcharge Sir John Wedder- " burn from ſending the petitioner abroad, or otherwiſe uſing him as " his menial ſervant; and to decern him to pay to the petitioner the " ſum of of damages and expences." *Petition to the Sheriff.*

It was anſwered for the defender, That the cauſe had been already determined by the Juſtices of Peace: That as they were competent judges, it was *res hactenus judicata*, and that it was incompetent for the Sheriff to review their proceedings. An extract was produced from the clerk to the Juſtices of Peace, and replies were given in for the purſuer: On adviſing of all which, " The Sheriff-ſubſtitute, " of this date, in reſpect of the proceedings before the Juſtices of " Peace, diſmiſſed the proceſs." Jan. 5. 1774.

A repreſentation was given in againſt this judgment by the purſuer and anſwers for the defender, with which the Sheriff-ſubſtitute made aviſandum to the Sheriff-depute, and the Sheriff-depute, of this date, " Recalled the interlocutor of the 5th January laſt, and " found that the ſtate of ſlavery is not recognized by the laws of " this kingdom, and is inconſiſtent with the principles thereof; and " found that the regulations in Jamaica concerning ſlaves, do not " extend May 20. 1774. *Interlocutor of the Sheriff Depute.*

" extend to this kingdom; and repelled the defender's claim to " perpetual ſervice: And in reſpect the purſuer does not alledge " wages were agreed to be paid him, Repelled his claim thereto, " and decerned."

Againſt this judgment, a bill of advocation was preſented by the defender, which coming in courſe of the roll before the Lord Kennet March 7. 1775. Ordinary, his Lordſhip, after adviſing memorials, was, of this date, pleaſed to make aviſandum to your Lordſhips, and to ordain the parties to give in informations: In obedience to which, what follows is humbly offered on the part of the defender.

The cause brought into this court by advocation.

In a country where the invaluable bleſſings of liberty are ſo compleatly enjoyed, and where the people are with reaſon ſo jealous of it as they are in Britain, it is natural for a good man when he hears the very name of ſlavery, to take the oppoſite ſide of the queſtion at once, without examination, and to conſider himſelf rather as a legiſlator impowered to enforce his natural prejudices, than as a judge, whoſe province it is to determine according to the law of the land as it ſtands, leaving it to the legiſlative power to correct that law, if it ſhould require any amendment.

The courts of this country are aware of, and ſuperior to ſuch prejudices; if the defender be well founded, he has no reaſon to be afraid of his cauſe; and when the queſtion is properly explained, he is under no apprehenſions that even the popular clamour will be againſt him.

No favour againſt the Defender.

The defender will here beg leave to obſerve, that it is almoſt unfair even to quote the word *ſlavery* againſt him; and that there is no occaſion for entering into a diſcuſſion of that queſtion in the preſent cauſe. It is acknowledged he was an indulgent maſter to the purſuer, when his authority over him was under no controul; and as he never choſe to uſe him as a ſlave, he is under no neceſſity of claiming him as ſuch; neither has he any intention of ſending him back to the country from which he brought him; ſo that there can be no ſuſpicion of the leaſt deſign on his part of uſing the purſuer with any degree of ſeverity; all that he claims, is a right to the ſervice of the purſuer, to which he cannot doubt but he is well intitled.

At the ſame time, in as far as the demand for the purſuer's ſervice may ſeem to be founded in the defender's right of property in him, he does not give up that part of his argument, but carries his claim no farther than to perſonal ſervice during life, upon being ſupplied with cloaths and neceſſaries, in the ſame manner as any other ſervant.

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As it had never been denied that the purſuer was always treated with humanity and indulgence, it is therefore impoſſible to imagine, that in the particular caſe under your Lordſhips conſideration, there can be any real hardſhip in giving judgment in favour of the defender. The purſuer will be certain of being well cloathed and fed, and treated with gentleneſs, whereas if he be left to his own choice, he may very probably fall into a ſituation where he cannot enjoy theſe advantages.

As the purſuer's counſel, in the argument before the Lord Ordinary, thought proper to plead their cauſe exceedingly high, and inſiſt that the defender had no title to the property of the purſuer as a ſlave, even in the Weſt Indies. The defender ſhall, in treating the queſtion, in the *firſt* place, endeavour to ſhow, That he was certainly intitled to the property of the purſuer in Jamaica; and *ſecondly*, That in conſequence of that, he ought to be allowed to carry the purſuer back with him to the Weſt Indies, if he ſhould chuſe it, altho' he does not inſiſt upon this in point of fact, as he has no ſuch intention: And *thirdly*, He hopes to ſhow your Lordſhips, that he cannot be deprived, either by law or equity, of a right to the perſonal ſervice of the purſuer during life. Order.

It was argued by the purſuer's counſel, that ſlavery was ſo abhorrent to the Law of Nature and Nations, that it could not be ſuppoſed to be admiſſible, or properly founded in the law of any country.

It is needleſs at preſent to trouble your Lordſhips with entering very deeply into what are allowed to be probable and natural cauſes of the origin of ſlavery among mankind, by almoſt every author who has wrote upon the ſubject. Slavery, not contrary to Law of Nature.

It is natural for barbarous and weak nations, after a victory, to exterminate their enemies out of a principle of fear. The changing the torments they generally inflict upon their priſoners into perpetual ſervice, certainly cannot be complained of by them: Neither is there any injuſtice in more civilized ſtates, where the ideal wants of luxury have not yet made the rich dependent on the poor; when a man who has no property, nor means of being ſupported, binds himſelf to the perpetual ſervice of another, who is able and willing to maintain him.

Thoſe two cauſes of ſervitude are authoriſed by the Civil Law, from which we draw moſt of our knowledge. And Juſtinian ſays, "*Servi* "*aut fiunt ex Jure Gentium, id eſt ex captivitate; aut Jure Civili, cum liber* "*homo ſeſe venundari paſſus eſt.*"

The purſuer's counſel, who has certainly neglected no trouble for the behoof of his client, is pleaſed to diſpute, that captivity is a proper origin of ſlavery, as a conqueror (he ſays) has no right to kill his captive. It

Captivity a reaſonable foundation for ſervitude.

It would be eaſy, by ſearching into remote principles in this manner, to bring very plauſible arguments againſt every right eſtabliſhed among mankind; but altho' the victor ſeems to have as good a right over the life, as over the property of the conquered, after reparation is made for the expences and damages of the war; and it was never diſputed, that conqueſt is a good title to all the poſſeſſions of the vanquiſhed; yet altho' the conqueror had no title to put his priſoner to death, ſtill as in fact they generally did uſurp that priviledge, and as it was likewiſe in antient times, and is ſtill among many nations, a practice, to ſubject the enemies which fall into their hands to the moſt excruciating tortures. In theſe circumſtances, it was a wiſe and humane inſtitution to ſet their avarice in oppoſition to their cruelty; and as the conquered reaped a clear advantage, in point of fact, from this alteration in manners, it gave a ſolid and equitable foundation to the obligation, in conſequence of which they were ſaved from death and from torture.

The purſuer is likewiſe pleaſed to ſay, that the only origin of ſlavery which can apply to him, is that by birth, which is unjuſtifiable, as a child could neither be a delinquent, nor ſell his liberty to another, nor ought to be ſubjected to any obligation from the crimes, captivity or contract of his parents.

Captivity applies to purſuer.

In the firſt place, the ſuppoſition of the purſuer is without any foundation; for he might have been taken a captive when a child as well as if he had been a man. And the ſame reaſoning which takes place for making captivity a foundation for ſervitude, holds in the one caſe as well as in the other; nor was it ever heard of, that any nation after a conqueſt, inſlaved the men and left the children at liberty.

Birth, a foundation for ſervitude.

But in the ſecond place, if ſervitude is once ſuppoſed to be eſtabliſhed in the parents, the conſtitution of it by birth, or the continuation of it to their offſpring, ſeems to be a natural conſequence. It will not be denied that wherever ſlavery was eſtabliſhed, this was the univerſal practice without a ſingle exception, *partus ſequitur ventrum*, was the rule of the Roman, as of every other law.

This univerſal practice of nations is ſurely ſufficient for the defender's purpoſe in the preſent argument; but if we reſort to reaſon, and the Law of Nature, it appears likewiſe to be well founded: For the child who is ſubjected to this apparent hardſhip, in reality owes its exiſtence to that very circumſtance; the maſter of his father and mother would, in all probability, not have conſented to their cohabitation, nor taken care of the latter during her pregnancy, if he was to have ſuffered a conſiderable loſs by the want of her labour, and the expence of the attendance neceſſary upon her, if he had no proſpect of reaping any advantage from the future labour of the child. And indeed,

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in the preſent caſe, abſtracting from all thoſe conſiderations, the value of the purſuer's ſervice during life, after being properly cloathed and fed, which is all that is now claimed, would not pay for the expence which has been laid out in ſupporting and teaching him, even ſince he came into the poſſeſſion of the defender.

The defender is at a loſs to underſtand what the purſuer's counſel could mean, when they argued, that ſlavery was contrary to the Law of Nations; for if we conſider the hiſtory of the world, from the creation till this day, as far as we are acquainted with it, it was eſtabliſhed in almoſt every nation without exception, till very lately, that it has worn into diſuſe, in ſome countries in Europe; but nearly at the ſame time it was eſtabliſhed by the inhabitants of thoſe very countries, in the ſettlements which they had made in the weſtern half of the Globe; ſo that it may be almoſt ſaid, that there never was a nation in the world of any conſequence in which ſlavery did not take place at every period of its exiſtence.

Servitude not contrary to the Law of Nations

It is well known that the moſt civilized nations of antiquity, the *Greeks* and *Romans*, were ſerved almoſt altogether by ſlaves; and that their maſters had the moſt unbounded power over them; nor was it ever aboliſhed, notwithſtanding the height of improvement and elegance to which thoſe diſtinguiſhed nations arrived. It took place with great ſeverity among the anceſtors of our neigbouring country, and of this. The antient Germans (as Tacitus informs us in his time) had the power of life and death over their ſlaves. It is now practiſed to the fulleſt extent by the Spaniards, Italians and Ruſſians, even in their European dominions; and by all the nations of Europe in their ſettlements in America, and both the Indies.

So far from being contrary therefore, it may ſurely be averred, with truth, That ſlavery is ſupported by the practice, and by the Law of almoſt all Nations, which is the beſt commentary upon the Law of Nature.

Purſuer's fact and argument on this head, anſwered.

The purſuer would ſeem now to have given up this part of his argument: He endeavours, in the firſt place, to make ſome diſtinctions without any difference or real foundation; (he ſays) That except the Spaniards and the Eccleſiaſtical State, who enſlave the Moors, that no other European kingdom condemns captives to ſlavery.—But this is a miſtake in point of fact; for the kingdom of Naples, and every ſtate of Italy and the Portugueſe, make ſlaves of all the Turks and inhabitants of the coaſt of Africa which they take in war; the Ruſſians and Poles uſe their captives in the ſame manner; and Turky in Europe is filled with Chriſtian ſlaves. He adds, that the Chriſtians do not enſlave Chriſtians, nor the Mahometans, Mahometans.—This is ſurely entirely foreign to the argument, as ſlavery is perfectly eſtabliſhed in all thoſe countries.

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The purſuer ſeems conſcious of the inaccuracy of this reaſoning, and proceeds to argue, that there are few enormities which may not be ſupported by the practice of reſpectable nations, and the opinions of great men. This is no doubt giving up the point; but the defender humbly apprehends, that although a particular nation may ſometimes err in one or two circumſtances in its manners, yet that there is no example of any practice contrary to ſound reaſoning, which has taken place, almoſt by the univerſal conſent of all nations, which is the caſe with regard to ſervitude; and that ſuch a circumſtance muſt be much ſtronger than all reaſoning and wire-drawn arguments, which were ever conceived in cloſets, to ſhow that ſuch inſtitutions are founded on reaſon, and agreeable to the Law of Nature.

Servitude approved of by the moſt virtuous writers on Politicks.

But not only has this inſtitution been found neceſſary in practice; but thoſe writers who have wrote ideal forms of government for the good of mankind in their cloſets: Even ſuch of them as have ſhown the greateſt reſpect for humanity in general, have ſtill thought it neceſſary to ſuppoſe this practice to take place in their imagined perfect ſtates of government. Plato in his Republick; Cicero in his treatiſe *De Legibus;* Sir Thomas More in his Utopia, and our countryman Mr Fletcher of Salton, have all conſidered the inſtitution of ſlavery as a proper ingredient in a perfect government. Grotius, B. 2. C. 5. And Puffendorf, B. 6. C. 3. incline to the ſame opinion; and Bodinus, *De Republica*, L. 1. C. 1. obſerves with great reaſon and elegance, "*At veriſimile non eſt omnes ubique populos ac nationes, tot reges ac "principes, tam multos legumlatores virtute rerumque gerundarum uſu clariſſi- "mos ſervitia tanta conſenſione ſuſcepturos fuiſſe, ſi cum ratione ac natura pug- "naret.*"

The purſuer endeavours to take off the force of this quotation, by reciting a poſterior paſſage from the ſame author, from which he would infer, that he lays down a doctrine prefectly contrary and oppoſite: But beſides, that Bodinus is not to be ſuſpected of ſuch a glaring inconſiſtency, it is clear, that the paſſage quoted by the purſuer relates only to the motives by which individuals were ſometimes actuated; and he ſuppoſes, that if they could have got more profit by killing their enemies, than by ſaving them, that generally they would have paid little regard to their lives. But this does not contradict the ſentiment laid down in the above mentioned paſſage, that the inſtitution of ſlavery would not have been introduced and ſupported by ſo many legiſlators, famous for their virtues and abilities, if it had been contrary to reaſon and nature.

Purſuer argues that Negroes are ill uſed in Colonies.

The purſuer is pleaſed to give a very long detail of the many hardſhips to which ſlaves are particularly ſubjected in our Colonies. He tells us, that they are uſed with ſuch barbarity, that great numbers die

die in the paſſage, and that upon their arrival they are hardly allowed any food, and at the ſame time, obliged to a degree of labour which it is impoſſible to ſupport; and, that the general ſpirit of the colony-laws with regard to ſlaves, are conceived in ſo tyranical a ſpirit, that it is clear the negroes muſt be treated in a very barbarous manner.

It would be very eaſy for the defender to refer to ten times as many accounts of ſlaves, who live perfectly happy and contented, and would not wiſh to alter their ſituation; but it would be very improper to trouble your Lordſhips, or to ſwell a paper, which will be at any rate too long, with ſuch inconcluſive narrations. And it is evident that altho' there may be a few exceptions, that it is abſolutely impoſſible there can be any general foundation for ſuch complaints. It will at leaſt be allowed, that the moſt worthleſs of the Captains of veſſels in the Guinea-trade, and of the planters in the Weſt Indies, pay a pretty conſtant attention to their own pecuniary intereſt. It is inconceivable therefore, that a Captain of a Guinea veſſel ſhould not do every thing in his power to contribute to the health and proper accommodation of the ſlaves during the voyage, as his fortune depends entirely upon the number he brings to the Weſt Indies, and the condition in which he expoſes them to ſale: And it is equally impoſſible that a planter ſhould either under-feed or over-work his negroes, as he knows well that every deficiency of them muſt be ſupplied at a very great expence. And in whatever ſtrict terms the colony-laws may be conceived, perhaps with a view of keeping the negroes in proper ſubjection, in the ſame manner as is the caſe with us in the articles of war, and regulations of the navy, yet ſtill the ſame reaſoning muſt operate upon the execution of them; and it is impoſſible, except the diſpoſitions of men were entirely changed, and a race ſhould be made who would prefer wanton cruelty and loſs of character, to their intereſt and good name, that the hardſhips ſuppoſed by the purſuer ſhould often take place, which no man in his ſenſes would put in practice with regard to his ox or his horſe. Anſwer.

And indeed there is no doubt, that our abhorrence of the inſtitution in queſtion, proceeds more from what poſſibly may, than from what generally does, happen: For a man muſt be mad, and perfectly blind to his own intereſt, who does not behave with kindneſs and humanity to his ſlaves; as if they are not kept, not only in health, but good humour, he will be deprived in a great degree of the advantages he might derive both from their labour and offſpring: And the condition of a poor man, even in a country like this, is without all doubt more helpleſs and liable to misfortunes, if he falls into any diſeaſe, than that of a negro in the Colonies; beſides, at the

the ſame time, that when in health, he is infinitely harder wrought and has leſs relaxation.

But your Lordſhips will obſerve that theſe diſquiſitions of the purſuer's, are only calculated to raiſe a clamour, and are perfectly foreign to the only point preſently in diſpute: For the defender, as has been mentioned, reſtricts his claim to the right of the purſuer's ſervice in Britain, and only enters upon the other parts of the argument in ſo far as they may be ſuppoſed to ſupport that claim.

Slavery neceſſary in the Weſt Indies.

But whatever the caſe may be with regard to this inſtitution in other parts of the world, it is impoſſible to deny, that it is abſolutely neceſſary in our Colonies in the Weſt Indies; and that if we were to diſcontinue that practice there, we ſhould not only loſe all the wealth and ſupport which we derive from thoſe poſſeſſions, but muſt be reduced to purchaſe our ſugars and the productions of thoſe countries from other nations who ſhould continue the preſent practice: For being accuſtomed to theſe commodities we could not now give them up; and altho' they might once be conſidered only as the luxuries, they are certainly now become the neceſſaries of life.

That without the uſe of negro-ſlaves thoſe Colonies muſt be abandoned, is evident almoſt without any reaſoning. Even if the conſtitution of Europeans were adapted to labour in thoſe climates, as the work of one day is ſufficient, from the general fruitfulneſs and nature of the climate, to ſupport a man idle for more than a week. It is evident, that, without compulſion, men never would be prevailed upon to beſtow that labour which is neceſſary to produce the commodities with which we are now furniſhed from theſe ſettlements.

But there is another circumſtance equally undeniable, which of itſelf proves this propoſition beyond a doubt: The bodies and conſtitutions of Europeans (particularly the natives of the northern parts, ſuch as Britain) are perfectly incapable of labour in the climates where ſugar is produced. A negro, if not over-worked, can toil under the influence of a Weſt India ſun without imparing his health, or ſhortning his life, whereas a native of this country cannot ſupport labour in the ſame proportion for a month, without certain deſtruction.

Even Georgia, tho' in a much more northern climate, was ruined at its firſt ſettlement, from the idea of excluding the labour of negroes; and the complaints againſt the firſt Engliſh Officers who ſettled in Jamaica for employing their ſoldiers there as labourers in the fields, are ſufficient proofs of this fact; which indeed is now ſo generally acknowledged, that a white man is never employed to labour except in a houſe or a ſhade.

If there had therefore never exiſted a ſlave in the other parts of the world, that inſtitution muſt have been introduced from abſolute neceſſity in the Weſt Indies; and it muſt be there conſidered as the Law of Nature, and of every nation which chuſes to make uſe of theſe countries.

The defender ſhall not therefore trouble your Lordſhips with any anſwer to the purſuer's declamations againſt ſlavery in general, interſperſed through the different parts of his memorial, as being totally foreign to the preſent queſtion, which depends upon that eſtabliſhed in the Weſt Indies, where it is abſolutely neceſſary: His ſuppoſition, that theſe ſettlements could be carried on without it, from what has been ſaid, will appear to be clearly chimerical in reaſoning, and there is no kind of fact to ſupport it. The ſtory of ſome ſmall territories in Aſia, where ſugar is raiſed by freemen, is not well authenticated; but no influence can be drawn from that circumſtance to the management of our Weſt India ſettlements.

In the *firſt* place, the people mentioned, only produce a little to ſupply themſelves; and the inhabitants of that country are by nature fitted to the climate, and conſequently can ſupport the neceſſary labour which it is impoſſible for Europeans to do in the Weſt Indies.

Slavery eſtabliſhed by the Practice and Laws of England & Great Britain in Colonies.

The defender ſhall in the *next* place proceed to ſhow, that by the practice and Laws of England, and after the Union, by thoſe of Great Britain, that the point is entirely fixed and eſtabliſhed; and that the practice of furniſhing America and the Weſt India Colonies with ſlaves from Africa, is conſidered as perfectly legal, and ſupported by various grants from the Crown, and by different Acts of Parliament.

The ſlave-trade was begun as ſoon as the Weſt Indies came into the poſſeſſion of Europeans, firſt by the Portugueſe and Spaniards, and afterwards by the Dutch. The Engliſh engaged in that commerce even before they had any plantations of their own. Mr John Hawkins, 1562, fitted out three ſhips and loaded them with negroes on the coaſt of Guinea, which he ſold to the Spaniards at St Domingo. In 1620, negroes was firſt introduced into Virginia, five or ſix years afterwards into Barbadoes, and have been always ſince made uſe of in the iſlands which were in the poſſeſſion of the Engliſh.

In 1585 and 1588, Queen Elizabeth had granted a patent to a body of merchants for the Guinea-trade between the river Senegal and Gambia. By a third patent in 1592, their boundaries were extended from the river Nagneze to the ſouth of Sierra Leon. In 1618, King James the I. granted a new charter to Sir Robert Rich and others; another was obtained from King Charles I. in 1631; and in 1651, the Rump Parliament granted another charter to new adventurers.

The

The convulsions of the times hindered these different Companies from succeeding to any extent; but in the 1662 (when by the navigation-act, foreigners were excluded from trading with our Colonies) it became necessary to apply seriously to the supplying of these different settlements with negroes; accordingly, a new Company was instituted by King Charles the II. at the head of which was the Duke of York, and many persons of distinction, which undertook to furnish three thousands negroes annually to our Colonies. The affairs of this Company went likewise into disorder, on account of loses sustained in the Dutch war. And in the 1672, another corporation was erected, called the Royal African Company, to this the King, the Duke of York, and many of the nobility subscribed. Their capital amounted to L. 111,000, and they continued to trade with success for many years after.

It was resolved at the Revolution to extend this trade; and accordingly in 1689, a convention was entered into with Spain for supplying the Spanish West Indies with negroes by the way of Jamaica.

In 1698, Parliament took this trade under their consideration, and past an act for regulating it: The act, *viz.* 9th and 10th, William III. "states the trade to Africa as highly beneficial to the kingdom, and "to the colonies and plantations thereon dependent." It provides for the erecting castles and forts for the better preserving and carrying it on, &c. In 1709 and 1711, the House of Commons voted some further provisions with regard to the better security of this trade. And in the 1712, the Company's affairs being much in disorder, an act was passed ratifying a composition they had entered into with their creditors; and among others, the House of Commons came to the following resolutions: "That the trade ought to be "open to all the King's subjects: That forts and settlements on the "coast are necessary: That contracts and alliances are necessary to "be made with the natives, in order *that our plantations may be supplied "with sufficient negroes at reasonable rates.*"

By the treaty of Utrecht in 1713, a contract was made for introducing into the Spanish West Indies *four thousand eight hundred negroes annually for eight years to come*: And in 1726, the 13th of George I. an Act was passed for supporting a project of the South Sea-Company for taking in negroes at *Madagascar* to be sold at *Buenos Ayres*; and the act recites, "*That the transportation of negroes from that island might "become a very beneficial branch of trade to the kingdom.*"

In 1720, upon surrender of the Royal African Company's charter, a new Company was erected by Act of Parliament, in which it is enacted, "That any of his Majesty's subjects, trading to Africa, may "erect ware-houses for security of their goods and *slaves.*" And, in

1752, another act was passed "for making compensation to the "Royal African Company for their charter-lands, forts, castles, "*slaves*, &c." and to vest the same in the new Company, and annexed to this statute, as an inventory of those effects, among which are expressly enumerated "694 *slaves, consisting of tradesmen, canoe-men, "labourers, women, and their children.*" All these the Parliament of Great Britain purchased from the Royal African Company, and reinvested them by this statute in the new Company.

Matters continued in this state till the 5th of his present Majesty 1765, when another statute was enacted, by which "all the lands, "*slaves*, forts, and other effects by former acts put into possession of "the African Company, were taken out of their hands and vested in "the Crown, and the trade was laid open."

From this deduction, it appears, that the negro slave-trade has been prosecuted by the English for upwards of two centuries, and has been supported by grants from the Crown almost for that period; has been likewise frequently confirmed by Parliament, and has been a particular article of treaties solemnly ratified with other nations; and, at one time, Parliament became themselves the purchasers of negro-slaves from the African Company.

And, indeed, by the act 5th of George the II. cap. 7. negroes are declared not only to be *slaves*, but "that they are to be held in the "same light with any other object of property." It is there enacted, "That houses, lands, *negroes*, and other hereditaments, and real "estates, shall be liable to and chargeable with all just debts, duties, "and demands of what nature or kind soever owing to his Majesty "or any of his subjects, and shall be asset for the satisfaction thereof "in like manner as *real estates* are, by the Laws of England, liable "to the satisfaction of debts due by bond or other speciality, and "shall be subject to the like remedies, proceedings, and process in "any Court of law or equity in the plantations, for seizing, extending, selling, or disposing of any such houses, lands, *negroes*, &c."

After this, it certainly cannot be denied, that by the Laws of Great Britain, the slavery of negroes is at least established in Africa, America, and the West Indies; and when the statute justifies and compells a sale, it surely must suppose that the property of the subject sold belongs to the purchaser.

The defender would not have given your Lordships so much trouble upon this head, if the pursuer had not thought it necessary for his argument, to deny that even in our Colonies a legal right to a slave could be defended by the Laws of Britain; and he likewise humbly apprehends, that the right which he claims over the pursuer, will follow without any difficulty when this point is once established.

The

Purſuer argues, that no proper Contract is ſhown.

The argument uſed by the purſuer againſt the defender's property in him as a ſlave, even in Jamaica, was founded principally on a denial that any proper contract had ever been entered into for that purpoſe. It was in the *firſt* place argued, that no contract could be ſufficient for ſo far altering the rights of nature, as to make one man the ſlave of another. And it was aſked, in the *ſecond* place, even upon the ſuppoſition that this was allowable, where this contract was by which the purſuer's right was eſtabliſhed?

Anſwer.

As to the *firſt* objection, it has been already fully ſhown, that ſlavery is not contrary to the Law of Nature, and has been ſupported by the practice of almoſt every nation in the world, till very lately that it has gone into diſuſe in ſome parts of Europe.

With regard to the *ſecond* objection, as to the particular contract upon which the defender claims. The general caſe is, upon the coaſt of Africa, that parents are, by the laws of the country, intitled to diſpoſe of their children; maſters of their ſlaves, (for ſlavery is there eſtabliſhed;) and conquerors of their priſoners got in war. It is believed that moſt of the ſlaves are purchaſed in conſequence of one or other of theſe powers: And as ſuch is the law of the country, the purchaſer is ſurely intitled to retain that for which he has paid a juſt and fair price. If the purſuer means to inſiſt for a written contract in the *Whidah* or *Anamaboe* language, the defender acknowledges he has none. He believes it is the cuſtom to tranſact theſe matters only verbally; and as he purchaſed the purſuer at a fair ſale, it is certainly unneceſſary to go farther back: And nothing can be more ridiculous than to ſuppoſe that every negro in the Weſt Indies, ſhould have a title to inſiſt that his maſter ſhould bring a proof of the particular manner in which he had been purchaſed by the Captain of the veſſel on the coaſt of Africa.

Purſuer argues, that Negroes are happy at home, and kidnapped by fraud.

The purſuer ſeems to give much weight to this pretended want of title in the defender; and, in order to inforce this part of his argument, has been at great pains to collect from many collections of Voyages and Travels, a number of ſtories with regard to the former happy ſtate of the negroes before the Europeans came among them; and has given your Lordſhips a long account of ſeveral frauds which are practiſed by them for kidnapping and enſlaving one another, from a deſire of acquiring the commodities imported from Europe.

Anſwer.

In the *firſt* place, the purſuer acknowledges himſelf, that ſlavery was introduced into thoſe countries before the arrival of Europeans, (as he ſays) by the Mooriſh Arabs. The defender indeed always underſtood, that this wandering nation never croſſed the Gambia, nor penetrated into the coaſt from which we are at preſent furniſhed with ſlaves: But as it is acknowledged that ſlavery was completely

eſtabliſhed

eſtabliſhed in thoſe countries before the diſcovery of them by the Europeans, that inſtitution ſeemed to have been planted there by the hand of nature, and intimately connected with the diſpoſitions and manners of the inhabitants: And indeed ſeems to be abſolutely neceſſary, as from the prodigious fertility of thoſe countries, and the fruitfulneſs of the women, if part of the inhabitants were not forced out of the country, either to the European ſettlements, or to the more inland parts of Africa, that part of the coaſt muſt ſoon be infinitely overſtocked, and be ſubjected to every degree of want and miſery; and perhaps reduced to the ſhocking neceſſity of feeding upon one another, which many authors, (equally credible with thoſe founded on by the purſuer,) affirm to be practiced in neighbouring nations, under the ſame circumſtances in other particulars, which have not the ſame opportunities of diſpoſing of their ſuperfluous inhabitants.

But however long this inſtitution may have ſubſiſted in thoſe countries, as it was found there by the Europians completely fixed and eſtabliſhed, they cannot be blamed for the introduction of it, or the conſequences which follow from that inſtitution.

The purſuer was pleaſed to give a very lively deſcription of the Golden Age, in which he ſuppoſed the negroes to have lived before the introduction of ſlavery among them; which ſeems to ſurpaſs that given by the antient poets of the age of Saturn. Theſe ſtories are ſo common in all nations, that they are ſeldom introduced into ſerious argument, and muſt have been perfectly ideal in the preſent caſe, as we have no author who viſited thoſe countries before ſlavery was introduced: And if we are to judge of paſt times by the preſent, it is well known, ſince we have been acquainted with that part of the world, that the miſeries of the inhabitants of the coaſt, do not proceed from the Europeans, but from the frequent irruptions of the numerous and hardier race of the inhabitants of the more inland and mountainous parts of Africa, by whom they are as regularly conquered and over-run, as the Eaſt Indians and Chineſe are by the Tartars, and are treated in the moſt contemptuous and barbarous manner.

The King of Dahomy who conquered Whidah, and the adjacent countries in the beginning of the century, and the Jagas who ranſacked all the coaſt from Benin to the Cape of Good Hope, are recent examples of this; and as the ſame cauſe always ſubſiſted, viz. the vicinity of a narrow fertile coaſt to an extenſive inland and mountainous country, it is probable, that, ſince Africa was peopled, that part of it with which the Europeans have any commerce, has been conſtantly

conſtantly and regularly ſubjected to the cruelty and caprice of its barbarous neighbours.

There is no reaſon therefore for ſuppoſing, that their condition has been rendred worſe by the European trade. And if they had their choice they would probably perfer living in ſecurity in a Britiſh Colony, and being well cloathed and fed, tho' ſubjected to labour, rather than have their heads ſtuck upon a pole, as an ornament to the court-yard of their conquerors, which is a common practice upon theſe irruptions of the Inland Africans.

With regard to the ſtories told by the purſuer of the different frauds committed in the kidnapping of ſlaves;—many of them have probably no other foundation but the imagination of the Voyage-writers, (a race of men famed for inventions and want of veracity, ſince the begining of the world): That in every commerce many frauds are committed, there can indeed be little doubt; but it is impoſſible to ſuppoſe, that an article of trade, carried on to ſuch an extent, can be founded upon little tricks and deceit. It muſt be ſupported by the general manners, laws and conſtitutions of the countries, by which the States are furniſhed of about 100,000 negroes exported every year out of Africa; 100 perhaps may have been kidnapped or fraudulently detained; but this muſt have been confined to very ſmall proportion, and the exportation of the reſt muſt have been inforced by the regular laws and manners of the country. And, as far as this part of the argument goes, it would be as reaſonable to diſpute the title of the purchaſer of an ox in the Engliſh mercate, becauſe the practice of ſtealing cattle was not perfectly aboliſhed in the Highlands, as to deny the right of a planter to his negroes, becauſe there have been a few examples of fraudulent practices in the African-trade.

It would be for the honour of a nation, where it appeared that any fraudulent means had been made uſe of, to give redreſs to the unfortunate ſufferers: But where the trade is allowed and practiſed by both nations, the general preſumption muſt certainly be, That the property of the ſlave was honeſtly acquired; at any rate, it would not affect a fair purchaſer who had no connection with the fraud.

But ſurely the authority of the ſtatutes above mentioned, muſt put an end to this ideal and fanciful objection. By them, the negroes brought from Africa are declared to be the ſlaves and property of the purchaſers in our Colonies; ſo that undoubtedly all further diſquiſition on this head is perfectly unneceſſary: And whatever ſpeculatiſts may do for their amuſements in their cloſets, it would be exceedingly improper to encroach upon your Lordſhips time in purſuing any further ſuch imaginary ideas.

There

There is a fancy which ſometimes enters into the heads of the negroes themſelves, when brought to this country, that baptiſm gives them a title to their freedom. The preſſure's counſel ſeem not to inſiſt much upon it; and indeed it hardly deſerves a refutation.

Baptiſm does not alter the condition of a Negro.

The fact is, that ſlavery was eſtabliſhed among the Hebrews, and continued ſo afterwards among the Chriſtians, and is ſupported both by the Old and New Teſtament; and that it only fell into diſuetude very lately, in ſome parts of Europe, from a gradual change of manners.

In Leviticus, chap. xxv. ver. 44. It is ſaid, "Both thy bond-man, "and thy bond-maids, which thou ſhalt have, ſhall be of the heathen "which are round about you; of them ſhall ye buy bond-men and "bond-maids." And in Exodus, chap. xxi. ver. 2. and the following, there is deſcribed the manner in which even a Hebrew may become a ſlave to another.

It is evident that our Saviour gave no authority for any change: And neither the Apoſtles nor the firſt Chriſtians ever thought of making any alteration, but left matters entirely upon the old footing. St Paul ſays in his firſt Epiſtle to the Corinthians, chap. vii. ver 21. "Art thou called being a ſervant? Care not for it: But if thou mayſt "be made free, uſe *it rather*. For he that is called in the Lord, be-"ing a ſervant, is the Lord's freeman." After this, it is ſurely impoſſible to ſay, that any change was made by the introduction of chriſtianity with regard to this article; and indeed it was never the doctrine of our holy religion to encroach in any particular upon order or government, or to alter the conditions of men; but, on the contrary, to make them contented with their lott, and enable them to act their parts with propriety and chearfulneſs in that ſituation, where providence had placed them.

The different authors of character who have canvaſſed this point, are uniformly of the ſame opinion. Grotius ſays, lib. 2. cap. 5. "*Quod apoſtoli et antiqui cannones ſervis edicunt ne ſe dominis ſubtrahunt gene-*"*rale eſt, et errori eorum appoſitum qui omnem ſubjectionem, tam privatam* "*quam publicam, rejiciebant ut pugnantem cum Chriſtiana libertate.*" And with regard to the practice of the firſt Chriſtians, Guidelinus obſerves, in his treatiſe *De Jure Noviſſimo*, lib. 1. cap. 4. "Fuiſſe apud Chri-"ſtianos duitiſſime manumiſſorum ac vernarum uſum, ac etiam *Ec-*"*cleſias poſſidiſſe* ex monumentis conſtat."

It never entered into the head of any of the nations of Europe, that baptiſm was to convert a ſlave into a freeman. Vinnuis ſays, lib. 1. tit. 3. "Ac mos eſt captos ſervos permanere, etiamſi religio-"nem Mahumetis ejuraverunt *eo quod ſervum eſſe non adverſetur legi di-*"*vino.*" And it is well known that it is the practice in all the French ſettlements

ſettlements to baptize their negroes. The Code Noir ſays, that "Tout eſclaves qui ſéront dans nous iſles ſeront baptizè et inſtruitè "dans la religion, catholique apoſtolique et Romaine."

It is likewiſe acknowledged, that by the law of England, the baptiſm of a ſlave confers no temporal privilege. The words of Lords Hardwick and Talbot, in an opinion given when they were Solicitors-General, are, "And *baptiſm doth not beſtow freedom on him, nor make any* "*alteration in his temporal condition in theſe kingdoms.*" And this doctrine is clearly eſtabliſhed by Judge Blackſtone in the places afterwards recited.

The defender humbly hopes he has now ſhown that he had a moſt undoubted right to the ſervitude of the purſuer in the Weſt Indies; and that his baptiſm could make no alteration in his condition. It falls therefore now to be conſidered, what effect the circumſtance of his having been brought to Britain can be thought to have in law, with regard to altering the relation between the two parties.

Defender intitled to carry the purſuer back to Jamaica.

Although the defender never intended to make uſe of that power in the preſent caſe, and does accordingly not claim it at preſent, yet he humbly apprehends, allowing that, as long as the purſuer remains in this country, he may be intitled to the protection of the Britiſh Laws, yet, that the defender has an undoubted right, if he chuſes it, to carry him back to Jamaica, the country from which he bought him: And he will beg leave to ſay a few words upon this point, as it is connected with the general argument.

Proper effect of bringing the purſuer here.

The defender will be extremely ſorry to plead, that any perſon in this country ſhould not be intitled, whilſt he remains in it, to the protection of the Britiſh laws. But, at the ſame time, there is a medium in the beſt inſtitutions; and there is no doctrine which does not grow abſurd when carried too far.

It is perhaps right to preſerve our ideas of liberty as pure as poſſible, that there ſhould be no examples of ſlavery before our eyes in this country; but ſince we have choſen to be the firſt commercial nation in the world, and have interwoven our intereſts ſo with that of our ſettlements in other climates, that we cannot now exiſt without them; and as in theſe ſettlements the inſtitution of ſlavery is abſolutely neceſſary, it is ſurely carrying matters beyond all bounds, to advance that the ſingle accident of landing in this iſland, ſhould not only give a temporary protection, while the ſlave remains here, but ſhould altogether diſſolve the relation between the parties, and ſhould deprive the maſter of the power of carrying back the negro perhaps with himſelf to the country for which he was intended by nature, and in which he can only be of real ſervice to the community, or enjoy real happineſs.

There

There is no positive law containing such a prohibition; and surely there is no principle in equity or expediency which can impower a Court of judicature to interfere in the case, without the authority of a positive law.

In the first place, as property in the slave must be acknowledged to take place in the West Indies, it is surely an act of the greatest injustice to deprive a man of that property, from this single circumstance of his slaves being landed in Britain, especially in the present case, where neither party had the smallest suspicion that this was to be the consequence of bringing the pursuer into this country. Would be unjust to carry farther.

The preserving of property perfectly sacred, is the very basis of our constitution, and upon which even our liberty depends. Even in cases of absolute necessity, where public roads or streets are to be made, or forts are to be erected; or in the late case of the Scotish jurisdictions, (which were perfectly incompatible with good government,) property was never infringed in the smallest degree except by an act of the legislature; and the party always received full indemnification for his loss.

But in cases such as the present, if a West India master is not to be allowed to carry his negro back with him to that country, he is deprived of his property without any pretence even of seeming advantage, as every idea of that kind is sufficiently answered by a temporary protection of the laws whilst in Britain; and this piece of flagrant injustice is committed without the pretence of any law or act of the Legislature, and without any recompence being allowed to the party who is injured.

As the foundation of such a regulation is unjust, so the effects would be so contrary to reason, that it would be absolutely impossible to follow them out in all their consequences.

It is indeed a maxim generally acknowledged in law for this reason, that *statuta personalia effectum habent etiam extra territorum;* and that all questions concerning the state of a person are to be determined by the law of that country where his state has been fixed. This is the opinion of Authors on that subject.

Huber lays down this as a maxim, lib. 1. tit. 3. *de Conflict. Leg.* where he says, " Qualitates personales certo loco, alicui jure impressas " ubique circumferri et personam comitari, cum hoc effectu, ut ubi- " vis locorum eo jure quo tales personæ, alibi gaudent vel subjecti " sunt, fruantur et subjiciantur."

And Argentræus, art. 218. *gloss. c. numb.* 12. with whom agrees Rodenburgh and others, lays down the same rule in the following words, " Cum enim ab uno certoque loco statum hominis legem ac- " cipere necesse esset, quod absurdum sit, ut in quot loca *quis iter fa-* " *ciens*

" *ciens aut navigans delatus fuerit, totidem vicibus ille ſtatum mutaret aut* " *conditionem, et uno eodemque tempore hic ſui juris ille alieni futurus ſit.*"

The purſuer, conſcious of the force of this maxim, endeavours to ellude it by a very ingenious device. He ſays that his domicile muſt be held to be either in Africa, where he was born, or in Scotland, where his wife reſides, and not in Jamaica, where he had only a temporary reſidence.

It would appear that a reſidence of twelve or fifteen years was ſufficient to conſtitute a domicile. But the purſuer will hardly better himſelf by reſorting to Africa, as the circumſtance of his having been ſold in that country, will at leaſt found a ſufficient preſumption that he was conſidered as a ſlave there, until he bring ſome proof of the contrary.

The conſequences of the contrary doctrine would be unſupportable.

There is no doubt that a Britiſh veſſel manned with Britiſh ſailors, is ſubject to the laws of Britain; every cargo of ſlaves therefore carried from Africa to the Weſt Indies might inſiſt upon their *habeas corpus*, and demand either to be relieved or landed in Britain, as they were under the laws of this country; and it would appear that they were equally intitled to it (till ſome new law is made) with a negro who happens to be landed in England or Scotland.

Or let it be ſuppoſed, that by a tempeſt a Guinea veſſel, or indeed the whole African fleet, ſhould be driven into ſome of the ports of this iſland, is it poſſible to pretend that the law of this country would ruin a number of opulent merchants, to whom the cargo belonged, and who had entered into a fair trade, authorized by grants from the Crown, treaties with foreign nations, and confirmed by Acts of Parliament, and at the ſame time reduce the poor creatures themſelves, to the moſt helpleſs and cruel ſituation as they could have no chance of earning a livelihood here, but muſt periſh for want, as the purſuer is likely to do? Beſides, if we ſuppoſe the accident to happen to great numbers ruining ſome of our Colonies in the Weſt Indies, none of which could ſubſiſt without an annual ſupply of negroes from Africa?

In reaſoning there is no diſtinguiſhing between one negro and twenty thouſand; and the perſon who argues that the defender has not a right to carry the purſuer back to Jamaica, muſt allow, that in the caſe above mentioned, all theſe abſurdities would be inforced; and ſurely no man can argue ſeriouſly, that ſuch can be the law of any country inhabited by reaſonable beings.

Numberleſs other conſequences of ſuch a doctrine might eaſily be figured, fraught with contradictions and injuſtice. Suppoſe a man of rank, in ſome of the countries where ſlavery is eſtabliſhed, ſhould chuſe to amuſe himſelf by travelling, altho' perhaps he might be reſtrained from uſing his dependents, with the ſeverity which was permitted

mitted in his own country; if he was to come to this iſland, could it be imagined that our laws would interfere to prevent his carrying along with him the ſame retinue which he had brought here, or ſhould reduce a man, who had a hundred ſlaves the day before, to the ſame condition with the meaneſt of them, the inſtant that he landed in Britain?

If a French, Spaniſh, or Italian gally, manned with convicts, or with Turkiſh or Barbary ſlaves, ſhould be driven into any of our ports, it muſt follow from the ſame argument, that thoſe miſcreants muſt be all ſet at liberty in Britain, and the ſtate or private perſon to whom the veſſel belonged, be deprived of their property.

With regard to our ſettlements in the Weſt Indies in particular, it is evident, that the ſuppoſed regulation of a maſter's not having it in his power to carry his ſlave back to that country, after having been in Britain, muſt have very pernicious effects without ſuppoſing any uncommon accident, and allowing that all parties were upon their guard, and knew that the law was eſtabliſhed.

It is, in the firſt place, ſurely a very great inconvenience, that a man of property in that country, ſhould not have it in his power to bring over his perſonal ſervants, to whom he has been accuſtomed, when at the ſame time he cannot get their place ſupplied till he comes to Britain; but the bad conſequences of this regulation do not ſtop at inconveniencies.

It has already been obſerved, that it is perfectly impoſſible to cultivate theſe countries by the hands of Europeans; labour in the field in the open air, is to them abſolute deſtruction, and any kind of work is exceedingly pernicious.

The proper and humane method of cultivating theſe ſettlements, and carrying them on, is to throw all the labour upon the negroes, whoſe conſtitutions, being framed for that climate, are not hurt by it; but there are numbers of mechanical arts neceſſary to enable them to perform the different kinds of labour, of which, as they are utterly ignorant in Africa, ſo they cannot be inſtructed in them without an European education. It ought therefore to be a part of the police of both countries, to ſend ſuch negroes, as have any ſuperior degree of ingenuity and parts, to acquire a knowledge in the handicraft trades which are requiſite in the Weſt Indies; and upon their return there, they both better their own ſituation, and ſave the health and lives of Britiſh ſubjects.

The maxim founded on by the purſuer, excludes altogether this judicious, and almoſt neceſſary practice, as whatever a wiſe negro in that ſituation ought really to chuſe, yet a maſter will not put himſelf to ſo much trouble and expence, when all the return he is to expect depends entirely upon the caprice of the ſlave.

So far from its being prudent to eſtabliſh it as a rule, that a negro ſhould not be carried out of this kingdom againſt his will, it would therefore appear to be a much more ſalutary maxim, that none of them ſhould *be allowed to remain in it*, except with a view of being taught ſome mechanical trades, and afterwards to be carried back to our different ſettlements.

Whatever may be the caſe with regard to horſes, and ſome other animals, the race of men in this country is certainly not to be improved by a mixture from Aſia or Africa. It came out in proof, in the caſe of Somerſet the negro, lately tried before Lord Mansfield, that there were upwards of 15000 negroes in England. If the above mentioned regulations were to be inforced, it is pretty evident, however pernicious the reſolution might be to themſelves, that from motives of vanity, none of thoſe gentlemen would chuſe to go away; but their number muſt increaſe daily and conſiderably.

Whenever the new law is known, and the negroes in America are apprized of it, it muſt naturally be the only object of every one of them to make his eſcape to this country, by which he obtains, as he thinks, ſo great a privilege: This idea will naturally make them ſullen and diſcontented with their ſituation, and conſequently bad ſervants in the colonies; and if they can only contrive to earn or purloin a little money, they will eaſily prevail upon maſters of veſſels to convey them to this iſland.

It appears evident therefore, that this ſuppoſed regulation would deprive us of all the advantage of bringing negroes here, *viz.* of carrying them back to their own climate, after being inſtructed in the mechanical arts, and would ſubject us to a very ſhocking calamity, *viz.* the debaſing of our own race, by a mixture with the woolly heads and ſable ſkins of Africa. If they ſhould happen to acquire money, which is not at all impoſſible, we may ſee ſome of them returned for Corniſh (the defender will not ſuppoſe Scottiſh) Burrows; and the ſecond race, when improved by education, may arrive at the higheſt dignities of the ſtate.

And indeed, whatever may appear upon a ſuperficial examination of the caſe, the ſad conſequences of the purſuer's doctrine are diſcovered ſo clearly by experience, that it can never take place for any length of time; accordingly in the late French regulations, *viz.* in the fifth article of the Edict of October 1716, it is declared, that "Les eſclaves negres et de l' une, et de l' autre, ſex qui ſeront, con-"duits en France par leur maitres ou qui y' ſeront, par eax envoyes "*ne pouront, pretendre avoir acquis leur libertè ſans pretextè de leur arrivée* "*dans le royeaume, et ſeront tenus de retourner dans nous colonies, quand leur* "*maitres le jugement apropos.*"

It

It was always underſtood, that this was the law of England, as is laid down expreſsly in the opinions of Lords Hardwick and Talbot, which ſhall be afterwards mentioned; and by that law it is acknowledged, there are ſeveral caſes, beſides the preſent, in which a perſon may be tranſported beyond the ſeas without his own conſent. The Defender's doctrine ſupported by the Law of England.

Lord Hobart mentions, page 134, the caſe of an infant apprentice, bound by a proper indenture to a mariner or other perſon, where the nature of the ſervice imports, that it is to be done out of the kingdom: And there is an expreſs exception in the act of *habeas corpus* itſelf, 31. Charles II. cap. 2. paragraph 13. where it is enacted, "That perſons who by a contract in writing agree with a merchant "or owner of a plantation, or any other perſon, to be tranſported "beyond ſea, and receive earneſt on ſuch agreement, are excepted "from the benefit of the ſtatute."

If even a Briton free-born, it is acknowledged by the very ſtatute which ſecures our liberties, can in this manner be forced out of his country againſt his will. Can it be pretended that a negro, who cannot deny that he has been a ſlave from his original, firſt in Africa, and then in the Weſt Indies, ſhould be intitled to a privilege which is denied to the other?

With regard to this kingdom, as we had till lately little connection with foreigners, and no colonies of our own, many caſes in point cannot have occured: But as it muſt be acknowledged our ideas of liberty were not carried farther than thoſe of the Engliſh; there can be no reaſon for ſuppoſing that our law would have ſupported the regulation in queſtion. There is an anecdote mentioned by Mr M'Laurin in his late publication of remarkable caſes, which ſhows, that it was not the idea of the Scotiſh government, that the connection of a maſter and ſlave was diſſolved from the circumſtance of taking refuge in this country. And of Scotland.

It is mentioned in page 774, and is a proclamation of king James the IVth, about the year 1595, and is directed to the Sheriffs and other Magiſtrates in different counties, ſetting forth, That as a complaint had been made by John Faw the chief of the gypſies, that ſeveral of his dependents had abſtracted themſelves from him, and refuſed to obey him, and to leave the kingdom with him: The king orders all the Sheriffs, *&c.* to aſſiſt in ſeizing and ſecuring the fugitive gypſies; and that they ſhould lend John Faw for that purpoſe, their priſons, ſtocks, fetters, and all other things neceſſary thereto; And the proclamation ends with theſe words: "And als charge all "oure liegis, yat nane of yame moleſt, vex, inquiet or truble ye ſaid "Johne Faw and his cumpany, in doing of yair lefall beſſynes, or "oyrways within our realme, and in yair paſſing, remanying or "away-

" away-ganging furth of ye ſamin, under ye pane above writtin ;
" and *ſicklike, yat ye command and chairge all ſkippars, maiſters and mari-*
" *naris of all ſchippis within our realme, at all ports and havyns quhair*
" *the ſaid Johne and his cumpany ſal happin to reſort and cum, to reſave*
" *him and yame yrin, upoun yair expenſes, for furing of yame furth of our*
" *realme to ye partes beyond ſey* ; as you, and ilk one of yame ſicklike,
" will anſwer to us yrupoun, and under ye paine forſaid. Subſcrivit
" with oure hand, and under oure Prive Seile, *&c.*"

Altho' there may appear to be ſomething ludicrous in this proclamation, yet as the king was at that time near thirty years of age, and was always a man of learning, it ſhows beyond any doubt it was the general opinion, that a perſon who brought ſlaves or dependents into this country, was not only not to be prohibited, but was to be aſſiſted in the ſtricteſt manner in carrying them out again, if they ſhould endeavour to abſtract themſelves.

From what has been ſaid, the defender humbly apprehends, that there is nothing in the Law of this country, nor in equity, which can impower a court of judicature, to hinder one who brings a perſon, who was a ſlave, from a country where that inſtitution is eſtabliſhed, to carry him back there when he ſhall think proper ; and that if ſuch a regulation was to take place, the conſequences would be ſo exceedingly contradictory and inexpedient, that it could not long ſubſiſt.

The Defender intituled at any rate to the ſervice of the Purſuer.

The defender ſhall now come to the laſt article to be mentioned, which will not require a long diſcuſſion, after what has been already ſaid ; and he will endeavour to ſhow, that there cannot be any doubt that he is intitled to retain or reclaim the perſonal ſervice of the purſuer.

As the purſuer has been always uſed in the moſt indulgent manner, (which indeed he acknowledges,) he has no argument from compaſſion or humanity to ſupport him againſt the claim of the defender ; and it appears undeniable that in point of equity, laying aſide all the arguments with regard to the ſtate of ſlavery, that the defender is fully intitled to what he demands.

Defender's claim of ſervice equitable.

It is evident that if the defender had not purchaſed him, he muſt have been at preſent a common ſlave in Jamaica, if he had ſurvived the labour of that ſtate. The defender, beſides having paid a conſiderable price for him, was at the expence of ſupporting him plentifully, long before he could be of any uſe, and of his paſſage from the Weſt Indies to this country. He has altered his ſtate from that of a ſlave in Jamaica, ſubject to hard labour and rigorous treatment, to that of a Britiſh ſervant under the protection of the laws ; So that he muſt acknowledge, that when the defender gets what he demands, that

that he has received great benefit from his connection with him: And on the other hand it would ſurely be unjuſt and unequitable, if the purſuer, after having occaſioned ſo much trouble and expence to the defender, ſhould at the time when he is enabled to be of any real ſervice to him, refuſe to pay back any part of his debt; and whenever he is rendered capable by the education he has received from the defender to procure his ſubſiſtance, ſhould inſiſt upon deſerting his ſervice.

The defender would likewiſe humbly apprehend, that in point of law there can be no doubt with regard to the claim on which he inſiſts. It will not be diſputed, after what has been ſaid, that in Jamaica the purſuer was his property, and his ſlave, which comprehends under it all inferior degrees of ſervitude: Allowing therefore, (as has been mentioned,) that the laws of this country ought to give a temporary protection to every perſon reſiding in it, and even ſuppoſing, for arguments ſake only; That a maſter ſhould not have the liberty of carrying his ſlave out of the country, from the ſuſpicion that this power might reduce him again conſequentially to a ſtate of ſlavery, ſtill the defender muſt humbly apprehend, that as his right in every degree of ſervitude in the purſuer was fully eſtabliſhed before he came to this country, that the laws cannot poſſibly have a greater effect than to deprive him of ſuch powers as are inconſiſtent with themſelves and the practice of the country; but that they can never be interpreted to deprive him (who is intitled to the abſolute property of the purſuer) of a right to ſuch ſervice as is allowed, by the laws and practice of this kingdom, over free-born ſubjects and our fellow citizens. and ſupported by Law.

It is ſurely impoſſible to deny that the proprietor of a ſlave is at leaſt intitled to this demand, otherways he who had the abſolute property of the negro would be in a worſe ſituation than if he had him taken only bound as an apprentice for a certain number of years, or during life; and it would certainly be ridiculous in a very high degree, that a ſlave who had been purchaſed in Jamaica, ſhould be in a better ſituation, upon his arrival in Britain, than a free-born Engliſh or Scotchman, who had bound himſelf by indentures to the ſervice of another.

If the defender be right in this argument, in point of fact, his claim is certainly not too high. It has been mentioned as an uncontrovertible fact, that ſlavery took place till within theſe few centuries paſt, almoſt in every nation in Europe, as it made a part of the manners both of our Celtic and German anceſtors. The *adſcriptitii glebæ* ſtill remain in Ruſſia, Poland, Denmark, Sweden, and great part of Germany; and the ſtate of villainage, (which was moſt compleat ſlavery, Nothing in the Defender's claim of perpetual ſervice contrary to Law; This appears from the general practice of Europe,

and of England with regard to Villenage,

ſlavery, altho' it has fallen into diſuſe,) ſtill makes a part of the Engliſh Law; and till a new law be made, a perſon may appear in a Court of Record in England, and confeſs himſelf the villain of another. Lord Littleton, after all the lawyers, lays it down, ſect. 175, "That every villein is either a villein by title of preſcription, to wit, "that he and his anceſtors have been villeins time out of memory; "*or he is a villein by his own confeſſion in a Court of Record.*" And the laſt method of conſtituting villenage, has never as yet been prohibited, and was acknowledged by Lord Mansfield in his ſpeech in the caſe of Somerſet.

The ſtate of villenage was moſt perfect ſlavery. The deſcription of it is among the ancient writers: "*He knew not in the evening what* "*he was to do in the morning; he was bound to do whatever he was com-* "*manded.*" *Co. Lib.* 117.

and of Scotland.

Although our hiſtory has not been preſerved ſo entire as that of our neighbouring nation, yet there can be no doubt that the ſame inſtitutions took place among us: With us they were called *ſervi* and *nativi*, and are often mentioned in our ancient law, *vid. Reg. Maj.* book 2. chap. 12. Sect. 4. 5. *Q. Attach.* chap. 56.

It is not exactly known at what period this practice fell into diſuſe: It is probable it continued much farther down; but there is preſerved in the records in the year 1368, a grant by King David the 2d, to a *ſervus* and *nativus homo* of his freedom. It is in the following terms: "David, Dei gratia, Rex Scotorum, omnibus probis hominibus ſuis, ad quos preſentes literæ pervenerint, ſalutem, ſciatis nos, "Willielmum filium Joannis latorem preſentium, qui, ut a quibuſdam dicibatur, *noſter ſervus et nativus homo*, erat de Thanageo de "Thanadyce, infra vicecomitat. de Forfar, noſtrum liberum homi- "nem feliſſe, ſimiliter, et omnes qui de eodem Willielmo exierunt; "ita quod ipſe et omnes exeuntes ab eodem, cum tota ſua ſequela, "ſine clameo noſtro, vell heredum noſtrorum, quod aliquam notam "ſervitutis libere voleant infra regnum noſtrum ubicunque ſibi me- "lius videre expedire. Quare volumus et concedimus, quod præ- "dictus Willielmus, et omnes exeuntes ab eodem liberi, ſint et qui- "eti ab omni ſervituto nativa in perpetuum, omnibus fidelibus noſtris "ſimiliter inhibentes nequis ipſum Willielmum aut aliquem de ſe- "quela ſua, contra hanc conceſſionem noſtram, gravare, vexare, vell "aliqualiter inquietare, preſumant, ſub pæna omnium quæ erga nos "amitti poterint quocunque modo. In cujus rei teſtimonium præ- "ſentibus literis, penes ipſum Willielmum et ſequelam ſuam pro per- "petuo, remanſuris ſigillum noſtrum præcipimus apponi. Apud "Perth, ultimo die Februarii, anno regni quadrageſimo."

It cannot therefore be denied, that ſlavery was originally allowed by

by the law and conſtitutions of this kingdom; and therefore in ſound reaſoning, it cannot be ſaid to be inconſiſtent with them, except in ſo far as prohibited by ſtatute and poſitive law.

The purſuer has entered into a very long diſſertation, endeavouring to ſhow, that ſervitude was never acknowledged by the Law of Scotland: He argues, that the German *Servi* were not properly ſlaves but only Soccomen: That ſome authors ſay, the Caledonians were derived from the Germans; probably the Scottiſh *nativi*, if they ever exiſted, were like the Soccomen of the Germans: That the Scots were never conquered, conſequently rejected all ſlavery; and that it is probable that the paſſages in *Reg. Majeſtatem & Quon. Attachiamenta*, about *nativi* or villeins, have been inſerted by the authors in their works of the Law of Scotland, although no ſuch thing ever took place in this country. The purſuer's argument, that ſlavery never exiſted in Scotland.

In the *firſt* place, it is ſufficient for the defender's purpoſe, that the Law of Scotland does not reprobate the condition of a ſervant under indentures, or an apprentice, as that is all the right he at preſent claims over the purſuer. But this whole reaſoning, though very ingenious, is certainly by much too vague and inconcluſive for an argument before a Court of Juſtice; beſides, that it is moſtly founded upon miſtakes in point of fact. Anſwer:

It is acknowledged, that the Germans had power of life and death over their *Servi*, which was ſurely carrying their authority far enough; they did not uſe them in domeſtic ſervice, becauſe they were a rude people, and had no domeſtic ſervants: They were ſerved (Tacitus ſays) in their houſes by their wives and children; and there can be no doubt, that they might have converted them into domeſtic ſervants, if they had choſe it; and the change would have been exceedingly favourable for the *Servi*.

The connection the purſuer forms between the Germans and the Scots, has no ſort of foundation in hiſtory: The former are of the Teutonic race, and the latter of the Celtic; ſpeaking languages, and enjoying manners, totally different from each other; and probably ignorant of the exiſtence of one another, until a latter period of the world when the improvement of arts had opened a communication between diſtant countries.

The argument, that there could be no ſlaves in Scotland, as that country had never been conquered, is equally ideal. In the *firſt* place, there are many origins of ſlavery beſides conqueſt; but all the ſouth part of Scotland has been conquered by the Romans, and probably by the Northumbrians: The Danes had poſſeſſion of great part of the North: Thoſe countries had been again recovered by the Scots and the Picts, which formed the half of the body of the inhabi-

tants

tants of the country; had been conquered at once by Kenneth the III. Any one of these revolutions was sufficient to account for the introduction of slavery by the way of conquest alone.

The pursuer's supposition, that the passage in our old law books about *nativi* and *servi*, were introduced from the customs of other countries, can hardly be intended as serious. A lawyer who wrote a collection of laws of a country, could never be so particular in a description of persons in a certain state. If he knew that every one who read him must be conscious that such an institution had never existed in that country, no man would expose himself, knowingly, to such ridicule: And it cannot be supposed that the authors of these different books could be so ignorant of the situation of the country as not to know whether servitude really took place in it or not. But the charter of manumission above mentioned, if there were any doubt, puts an end to the controversy, and is demonstration, that that institution continued till the days of King David II. The discovery of one such charter makes it probable that others still remain, and that thousands have been lost.

Pursuer's argument, upon the supposition that villenage took place in Scotland.

The pursuer seems to be conscious that this point cannot be defended: And he endeavours to draw arguments in his favour from the supposition, that villenage existed in Scotland, which he had before attempted to controvert. For this purpose he argues, that as none of the methods of establishing villenage can apply to a negro, that therefore the slavery of negroes must be considered as prohibited: That the many methods of emancipation show the laws were inclined to liberty: That the condition of a villein was much better than that of a domestic slave; and that it was really a step towards liberty, as it was introduced by the northern nations over the slaves they found in the conquered provinces.

Answer.

These arguments are certainly very far from being conclusive. It would be very odd if the regulations of the *Quoniam Attachiamenta* could apply to a negro, as that system was written near two centuries before the discovery of the coast of Guinea. That emancipation should be made easy, was a humane and equitable law; but it never took place except from the real or supposed consent of the master, or from his negligence, or crime; neither of which apply to the present case.

It is a mistake in point of fact, that the condition of a villein was easy, as appears evidently from the discription of them in the ancient law-books, particularly that above recited from Coke upon Littleton. And the other fact, that this species of servitude was introduced by the northern nations over the slaves in the conquered provinces, is another mistake in point of fact; for we know that this, or

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a ſimilar ſort of ſervitude, took place among the Germans before they had ever made any conqueſt from the Romans.

The purſuer aſſerts, in the next place, That by the law of France a ſlave becomes a free man as ſoon as he enters the confines of theſe countries. That may be true in ſome particulars; but it has already been ſhown from the *Code Noire*, that their maſter has the full power of tranſporting them back to the Weſt-Indies whenever he ſhall think it proper.

But there ſtill exiſts in this country a ſpecies of perpetual ſervitude, probably the remains of the original *adſcriptitii glebæ, or villeins*, which is ſupported by late ſtatutes, and by daily practice, *viz.* That which takes place with regard to the *coaliers* and *ſalters*, where, from the ſingle circumſtance of entering to work after puberty, they are bound to perpetual ſervice, and ſold along with the works; and indeed, in our law, there are ſeveral other examples of perſons being bound to ſervitude during their lives. The act of Parliament 1597, cap. 272. enacts, "That ſtark beggars and their bairns be employed "in common warks, and their ſervice, mentioned in the act of Par- "liament 1579, to be prorogate *during their lifetimes*." And, without going further, it is the caſe with every ſoldier and ſailor; the former of whom is ſhot, if he endeavours to make his eſcape at any period of his life, by expreſs law; and the ſailor is ſubjected, during the ſame ſpace by a practice univerſally admitted, to be ſeized by force, and ſent againſt his will to the remoteſt corners of the world.

Many examples of greater ſervitude in this country than that claimed by the defender.

The purſuer is pleaſed to argue, that the coaliers and ſalters are not a remains of villenage; and his argument for this is, that the uſe of coal in Scotland is ſo late a diſcovery, that it muſt have taken place long after villenage diſappeared: And to prove this, he cites a paſſage from *Marco Paolo*, and another from *Æneas Sylvius*; from which it would appear, that theſe authors had been unacquainted with that mineral till the former ſaw it in China, and the latter in Scotland. And (the purſuer adds,) *Æneas Sylvius* obſerves, that coal was only uſed in Scotland where it was barren of wood; and as it is well known that, during the reign of the Jameſes, Scotland was very much covered with wood, there could be very little occaſion for coal.

Purſuer's objection as to this point.

This circumſtance ſeems to be little connected with the preſent queſtion; but the purſuer's arguments appear to have no tendency to prove that the ſtate of the coaliers in Scotland is not a continuation of the ancient villenage. By the charter above recited, that inſtitution is traced down to the 1368; and in all probability it continued a conſiderable time longer. Marco Paolo went to China about 100 years before that; ſo ſurely no inference can be drawn from the

Anſwer.

Italians

Italians being unacquainted with coal in the 1270, that this mineral was not discovered in Scotland before the 1368.

Æneas Sylvius was in Scotland in James the First's time. The defender does not know if the pursuer means, by the expression of *Jacobus quadratus*, to insinuate that it was in James the Fourth's time; but if he does so, its a mistake, for Æneas Sylvius died Pope in the fifth year of James III. *viz.* 23 years before James IV. succeeded; and there is no doubt that his journey to Scotland was in James the First's time, probably about the 1430. He then describes coal to have been in common use in Scotland; and it would appear very odd if there had been no coal-pits in Scotland 60 years before that, to which the charter above recited brings down the existence of villeins or *nativi*.

The quotation therefore from Æneas Sylvius, is a proof of the direct contrary of what the pursuer endeavours to infer from it.

The circumstance of two Italians being surprised at seeing pit-coal, affords no presumption that it had not been used for many centuries in Scotland. It happens every day, that Englishmen are not believed in that country, when they describe our coal to them even at present.

The defender does not know what the pursuer means by asserting, that it is well known, Scotland was very much covered with wood during the reigns of the Jameses. As Æneas Silvius, who was an eye-witness, declares, That in the time of James I. it was perfectly bare of wood; and it is exceedingly probable, that the immemorial use of pit-coal before that period had induced the inhabitants to cut down all the wood, without leaving or providing sufficiently for that kind of fuel.

It is needless to enter, with the pursuer, into the disquisition, Whether the state of coaliers be a severe kind of slavery or not? as it is certainly much more so than that to which the defender claims to reduce him.

In answer to the statute 1597, cap. 272, relating to beggars, the pursuer observes, that it appears from several proceedings of the Privy Council, that any of the idle poor who were willing again to betake themselves to industry regained their liberty. It might be very proper to mitigate this law in the execution of it; but as the act mentions their service shall be prorogate *during their lifetimes*, it was certainly a clear proof that service during life was not considered as contrary to the spirit of the law of Scotland.

It is unnecessary to follow the pursuer through his endeavours to show, by long deductions and remote reasonings, that servitude or service for life never took place in Scotland, when the

contrary.

contrary has been proved in the cleareſt manner: And indeed it muſt be allowed, thatwe had not drawn the boundaries of freedom with ſuch accuracy asour neighbours; for it took place in our own memory until the late ward-act, that, *under the name of arriage and carriage, and ſervices uſed and wont*, every tenant in Scotland might have been harraſſed and ruined by his maſter.

But there can be no doubt, that the Britiſh Statutes above mentioned, at leaſt, ſuch as paſſed ſince the Union, muſt be conſidered as part of the Law of Scotland, as they were made by the Britiſh Parliament, now come in place of the Parliament of Scotland, and relate to colonies in which the Scots have now the ſame intereſt with the Engliſh. It is an exceeeding fanciful idea, therefore, in the purſuer, to treat theſe ſtatutes as the laws of a diſtant and foreign nation, with which we are totally unconnected. They in reality make part of the Law of Scotland; and therefore, by that Law, ſlavery is perfectly eſtabliſhed in the Weſt Indies; and the purſuer muſt have been conſidered, whil'ſt he remained there, as the property of the defender.

Defender's claim not greater than that to which every apprentice is ſubjected.

The defender's claim againſt the purſuer, is not in reality ſo ſevere as that which takes place with regard to every apprentice. The circumſtance, that the ſervice of the one is generally for a ſtated period of years, and that here it is claimed for life; can make no difference; for an apprentice could certainly bind himſelf for a number of years beyond the probability of the duration of his life, nor can there be any reaſon why he ſhould not have it in his power to bind himſelf for his life itſelf. Mr Erſkine gives his opinion with regard to this queſtion in the following words: B. 7. tit. 2. par. 62. "It has "been ſaid by ſome writers, That a perſon cannot bind himſelf to "perpetual ſervice, ſuch obligation being contrary to liberty, which "is an unalienable right. But it is hard to conceive how an en"gagement of that ſort which is to laſt for life, is more inconſiſtent "with liberty than one which is to expire after 20 or 30 years; and "there appears nothing repugnant either to reaſon or the peculiar "doctrines of chriſtianity, in a contract *by which one binds himſelf to "perpetual ſervice* under a maſter, who, on his part, is obliged to "maintain the other in all the neceſſaries of life." And he quotes *Grotius de Jure Bell.* B. 2. cap. 5. § 27. And by the Engliſh Law, contracts of ſervitude for life are allowed to take place.

Claim of ſervice for life ſupported ſtrongly by the Law of England.

The principle inſiſted on by the defender, is laid down in the cleareſt manner by the Law of England, in the late learned and elegant commentary of Judge Blackſtone: Altho' he takes it for granted, that by the Law of England, a negro becomes free upon being landed in that country, yet wherever the ſubject occurs, he marks the diſtinction with the utmoſt preciſion, and lays it down invariably,

that

that he ſtill continues ſubject to the obligation he lies under of *perpetual ſervice* to his maſter, his words are as follows, in different parts of his commentary.

Com. Vol. 1. B. 1. chap. 10. p. 127. "And this ſpirit of liberty is ſo deeply implanted in our conſtitu- "tion, and rooted even in our very ſoil, that a ſlave or a negro, the "moment he lands in England, falls under the protection of the "laws, and ſo far becomes a freeman, *tho' the maſter's right to his ſer- "vice may probably ſtill continue.*"

Idem, Chap. 14. p. 425. and 426. "And now it is laid down, that a ſlave or negro, the inſtant he "lands in England, becomes a freeman; that is, the law will pro- "tect him in the enjoyment of his perſon and property. *Yet, with "regard to any right which the maſter may have acquired to the perpetual "ſervice of John or Thomas, this will remain exactly in the ſame ſituation as "before; for this is no more than the ſame ſtate of ſubjection for life, which "every apprentice ſubmits to for the ſpace of ſeven years, or ſometimes for a "longer term.*" Hence too it follows, that the infamous and unchriſ- "tian practice of with-holding baptiſm from negro-ſervants, leaſt "they ſhould thereby gain their liberty, is totally without founda- "tion, as well as without excuſe. The law of England acts upon "general and extenſive principles: It gives liberty, rightly under- "ſtood, that is, protection, to a Jew, a Turk, or a heathen, as well "as to thoſe who profeſs the true religion of Chriſt: and it will not "diſſolve a civil obligation between maſter and ſervant, on account "of the alteration of faith in either of the parties: But the ſlave is "entitled to the ſame protection in England before, as after bap- "tiſm; and whatever ſervice the heathen negro owed to his Ameri- "can maſter, the ſame he is bonnd to render when brought to Eng- "land, and made a Chriſtian."

Idem, B. 2. Chap. 26. p. 402. "And as in the goods of an enemy, ſo alſo in his perſon, a man "may acquire a ſort of qualified property by taking him a priſoner "in war, at leaſt till his ranſom is paid. And this doctrine ſeems to "have been extended to negro-ſervants, who are purchaſed when "captives of the nations, with whom they are at war, and continue "therefore in ſome degree the property of their maſters who buy "them, tho' accurately ſpeaking, that property conſiſts rather in the "perpetual ſervice, than in the body or perſon of the captive."

Theſe authorities are ſo expreſs in point of the preſent queſtion; and from the examples given before, it is ſo evident, that the right the defender claims in the purſuer, is not reprobated by the laws of this country, by which alone his power can be circumſcribed, that he has no doubt your Lordſhips will find him entitled to the ſervice of the purſuer.

'Altho'

Altho' these quotations from Judge Blackstone are perfectly clear; yet the pursuer (it seems) looks upon himself, as under some sort of obligation to give an answer to them: He quotes only part of the passages, and endeavours to squeeze them into the doctrine, that it is only upon supposition that the negro has become voluntary bound in the West Indies to perpetual service, that the master should have any claim over him.

The defender will make no answer to this observation, but only beg your Lordships will read over the passages again, where it will appear evident, there cannot be the least pretence for such an interpretation, the first passage alone excludes altogether this idea, where it is said, "That a negro, the moment he lands in England, falls "under the protection of the laws, and so far becomes a freeman, "*tho' the master's right to his service may probably still continue.*" There can be no doubt, if Mr Blackstone had had the distinction mentioned by the pursuer in view, he must have taken notice of it here, and not asserted the doctrine in general.

Case of Somerset put against Defender's claim.

As the late decision in the Court of King's Bench, in the case of Somerset the negro, may be founded on by the pursuer; it may be perhaps proper to observe, (altho' that decision could not affect the Law of Scotland,) that still it was pronounced upon specialities which do not in any degree take place in the present question.

It will be only necessary for that purpose to recite Lord Mansfield's Speech on that occasion, which was in the following words: "*We* "*pay due attention to the opinion of Sir Philip York and Mr Talbot, in the* "*year* 1729, *by which they pledged themselves to the British planters for the* "*legal consequences of bringiug negro-slaves into this kingdom, or being bap-* "*tized*; *which opinion was repeated and recognized by Lord Hardwick, sit-* "*ting as Chancellor, on the* 19*th October* 1749, to the following effect: "He said, That Trover would lye for a negro-slave; that a notion "prevailled, that if a slave came into England, or became a Chris- "tian, he thereby became emancipated; *but there was no foundation in* "*law for such a notion*: That when he and Lord Talbot were Attorny "and Sollicitor General, this notion of a slave becoming free by "being baptized, prevailed so strongly, that the planters industri- "ously prevented their becoming Christians, upon which their opi- "nion was taken; and upon their best consideration, they were "both clearly of opinion, *That a slave did not in the least alter his situ-* "*ation or state towards his master or owner, either by being christned or* "*coming to England*: That tho' the statute of Charles the II. had abo- "lished tenor so far, that no man could be a villein regardant; yet "if he would acknowledge himself a villein, engrossed in any Court "of

" of Record, *he knew of no way by which he could be entitled to his freedom*
" *without the conſent of his maſter*. We feel the force of the inconve-
" niencies and conſequences that will follow the deciſion of this queſ-
" tion; yet all of us are ſo clearly of one opinion upon *the only* queſ-
" tion before us, that we think we ought to give judgment without ad-
" journing the matter to be argued before all the Judges, as uſual in
" the *habeas corpus*; and as we at firſt intimated an intention of doing
" in this caſe. The only queſtion then is, Is the cauſe returned
" ſufficient for remanding him? If not, he muſt be diſcharged.
" The cauſe returned is, The ſlave abſented himſelf, and departed
" from his maſter's ſervice, and refuſed to return and ſerve him
" during his ſtay in England; whereupon by his maſter's orders
" he was put on board the ſhip by force, and there detained in
" ſecure cuſtody to be carried out of the kingdom and ſold: So
" high an act of dominion muſt derive its authority, if any ſuch it
" has, from the Law of the Kingdom where executed. A foreigner
" cannot be impriſoned here on the authority of any law exiſting in
" his own country. The power of a maſter over his ſervant is
" different in all countries, more or leſs limited or extenſive. The
" exerciſe of it therefore muſt always be regulated by the laws of the
" place where exerciſed. The ſtate of ſlavery is of ſuch a nature,
" that it is incapable of being now introduced by Courts of Juſtice
" upon mere reaſoning, and inferences from any principles natural
" or political; it muſt take its riſe from poſitive law. The origin of
" it can in no country or age be traced back to any other ſource;
" immemorial uſage preſerves the memory of poſitive law long after
" all traces of the occaſion; reaſon, authority and time of its intro-
" duction are loſt; and in a caſe ſo odious as the condition of a ſlave
" muſt be taken ſtrictly. The power claimed by this return was ne-
" ver in uſe here. No maſter ever was allowed here to take a ſlave
" by force to be ſold abroad, becauſe he had deſerted his ſervice, or
" for any other reaſon whatever. We cannot ſay the cauſe ſet furth by
" this retnrn is allowed or approved of by the Laws of this Kingdom;
" therefore the man muſt be diſcharged."

This opinion ſeems to be founded upon the circumſtance, that the maſter declared he was to ſend the negro abroad *there to be ſold*; and for that purpoſe, had confined him without the authority of a judge: And it does not at all follow from it, that the ſame deciſion would have been given, if he had ſimply claimed the privilege, under the warrant of a judge, of carrying him with him, without mentioning his particular purpoſe, or without an intention to ſell him: And indeed it is almoſt certain, that the Court of Kings Bench did not intend to find, that a maſter might not compel a ſlave to return to the

plantations,

plantations, except where there was ſome particular ſpeciality: For Lord Mansfield declared, *that the Court paid due attention to the opinion of Sir Philip York and Lord Talbot in* 1729; and that opinion fixes this general point in the ſtrongeſt terms. It is in the following words: "*We are of opinion, that a ſlave by coming from the Weſt Indies, either with* "*or without his maſter, to Great Britain or Ireland, doth not become free;* "*and that his maſter's property or right in him, is not thereby determined or* "*varied*; and baptiſm doth not beſtow freedom on him, nor make "any alteration in his temporal condition in theſe kingdoms. We "are alſo of opinion, *that the maſter may legally compel him to return to* "*the plantations.*"

The defender would humbly apprehend, that the Court of King's Bench, after mentioning, that they paid due attention to ſo high an opinion, would never have declared, that they were ſo clearly of opinion upon the only queſtion before them, that they would not even adjourn the matter to be argued before all the Judges, as is uſual in caſes of *habeas corpus*, if their opinion had been in direct contradiction to that of Sir Philip York and Mr Talbot, when that is taken together with the expreſſion in Lord Mansfield's ſpeech, "*confining it to the only* "*queſtion before us*," there can be no doubt, that the deciſion of the Court of King's Bench did not contradict the general principle laid down by the two learned lawyers above named; and it is undeniable, that it muſt have proceeded upon a ſpeciality, and it is immaterial whether the defender has fallen upon the right one or not.

But it is impoſſible to pretend, that this judgment can be founded upon at all, in oppoſition to the preſent claim of the defender. It does not inſinuate in the moſt indirect terms, that the maſter was not intitled to the ſervice of his negro; on the contrary ſeems ſtrongly to ſupport that doctrine, from the declaration made in the beginning; and after the authorities quoted above from Judge Blackſton, there can be no doubt, that this claim is underſtood to be ſupported by the fixed Law in England.

Purſuer's argument, that the reſtriction of the Defender's claim does not alter the caſe.

The purſuer is pleaſed to argue, that the defender's reſtricting his claim to that of perpetual ſervice, makes no difference in the caſe; for, that if ſlavery be unjuſt, it cannot produce a juſt claim, that no court can admit it partially and reject it partially, that no court can enforce domeſtick ſubmiſſion; that if the defender's claim be allowed, the laws of the Colonies muſt ſoon be adopted, *&c.*

Anſwer.

If the purſuer is pleaſed to take it for granted, that every claim the defender has upon him is unjuſt; no doubt there is an end of the queſtion: But he humbly apprehends the reſtriction of his claim to ſervice during life, anſwers every objection, which can poſſible be

be made. Altho' his claim to the property of the purſuer in Jamaica was perfectly juſt, yet he does not inſiſt upon that part of his right, which would ſeem not to be ſupported by the practice of this country: In that view, the defender humbly apprehends that no court will reject his claim, thus qualified, even if they ſhould diſapprove of ſlavery in its full extent; as to no courts enforcing domeſtick ſervice; it is certainly done every day by Juſtices of Peace, and other inferior judges, when ſervants or apprentices run away from their maſters: And it is undoubtedly carrying matters beyond all bounds, to ſay, That the laws of the colonies muſt ſoon be introduced, if the purſuer ſhould be found intitled only to that degree of ſervice which every ſervant is bound to pay his maſter, with this only difference, that in place of wages the purſuer is to receive cloaths, the purchaſe of which is in general the only object of wages.

The defender will not lengthen a paper, already too long, by a recapitulation of what has been ſeid; but upon the whole, he humbly hopes, your Lordſhips will advocate the cauſe; and find that he is intitled to the ſervice of the purſuer during life.

In reſpect whereof, &c.

JA^{s}. FERGUSON.

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JA^s. FERGUSON.

Joseph Knight a Negro. of John Wedderburn of Ballendean

The pursuer when a Boy, was brought from the coast of Guinea by Capt Knight and sold to the Deft at Jamaica

The Deft bred him up for his personal servt and about 4 years ago brought him with him to Scotland. where he was taught to read and write, instructed in the Christian religion & baptized.

He happened to get one of the maids in the house with child & afterwards married her. But Mr Wedderburn not giving her a house, or choosing to let her continue in the family, the pursuer intended to leave his master

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Mr Wedderburn applyed to the Justices of peace, Knight e-
mitted the Declaration p. 2d. and they found Mr Wedderburn entitled
to his service p. 3d. Knight on this applyed to the Sheriff
of Perth, who pronounced the Interlocutor p. 3d & 4th
whereupon the cause was advocated by the Defender.

Pleaded by the pursuer

1st That Slavery is contrair to the Law of Nature, and altho the
Defr waives at present the claim to him as his Slave, (tho with
out passing from it) yet the perpetual servitude claimed is the
same thing. That it is also contrair to the Law of nat-
ions, and insist much on the Pursuers giving no consent &c

2dly That it is inconsistant with the Law of this country, that it
at no period took place in it, and tho it had, is now abolished.

3dly That by the Laws of France & other countrys, when a Slave
comes there he becomes free, much more must it be so by the
Laws of this free State, and that it is usual for planters &
others when bringing their Slaves to Britain, to lay them under
Indentures which was not done in this case.

mentions the case of Somerset, but does not insist on it
Insists on the Impossible & Hardships &c

Answered for the Defr.

1st That Slavery is undoubtedly founded in the Law of Nations,
being received in some degree amongst all of them, from whence
its being agreeable, or not repugnant to the Law of Nature
may be argued.

2dly That both by the English & British acts of Parlt the
Slave Trade is allowed, and protected. That the Defr lawfully
got right to the Pursuer, and cannot be deprived of his pro-
perty by bringing the pursuer to Britain.

3dly That the use of Negros in the west Indies was absolutely
necessary &c and if the Negros coming to Britain freed
them the consequences would be dreadful. — That the Defr
admits the pursuer has the protection of the British Laws when
here

Pleaded ...

1st. That Slavery is contrary to the Law of Nature, and altho the Deft. waves at present ~~the~~ insisting on the claim to him as his Slave, (tho with out passing from it) yet the perpetual servitude claimed is the same thing. That it is also contrary to the Law of Nations, and insist much on the Pursuers giving no ... of ...

2dly. That it is inconsistent with the Law of this country, that it ... and tho it had, is now abolished.

... in it, and ... a Solace ...

here for the Security of his person, but that cannot deprive his master of his right to his Service

That the case of Summerset does not aid the pursuer. It was determined on specialtys, and the Great Judge in delivering his opinion in that case, declaired he paid regard to attorney and Sollicitors generals opinion in 1729, and Lord Hardwicks opinion in 1749. both of which support the plea mentioned by the Defender.

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